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Counsel for Plaintiff  
RUSSIAN RIVERKEEPER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RUSSIAN RIVERKEEPER, a non-profit  
public benefit corporation organized under  
the laws of the State of California,

Plaintiff,

v.

PACIFIC STATES INDUSTRIES, INC.,  
NORTH CLOVERDALE BLVD., LLC

Defendants.

Case No. 3:07-cv-05393-MHP

**NOTICE OF COMPLETION OF  
REVIEW PERIOD ON PROPOSED  
SETTLEMENT**

**TO THE COURT:**

**PLEASE TAKE NOTICE** that the federal government has completed its review  
of the settlement agreement reached by the parties in this proceeding, which is

1 memorialized in the Consent Decree attached to this notice as Attachment 1. The  
2 federal government does not object to the entry of this Consent Decree.

3 Plaintiff therefore asks that the Court execute and enter the Consent Decree. The  
4 Proposed Order may be found on page 17 of the Consent Decree attached hereto as  
5 Attachment 1. Courtesy copies will be lodged with the Court pursuant to General Order  
6 No. 45.  
7

8  
9  
10 Respectfully submitted,

11 Dated: August 12, 2008

LAW OFFICES OF ANDREW L. PACKARD

12  
13 /s/ Michael P. Lynes

14 Michael P. Lynes

15 Attorneys for Plaintiff

16 Russian Riverkeeper  
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# ATTACHMENT 1

Andrew L. Packard (State Bar No. 168690)  
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~~PROPOSED~~  
 CONSENT DECREE

**CONSENT DECREE**

The following Consent Decree is entered into between Plaintiff Russian Riverkeeper ("Riverkeeper" or "Plaintiff"), and Defendants Redwood Empire Sawmill, Pacific States Industries, Inc., and North Cloverdale Blvd., LLC (collectively "Defendants"), with respect to the following facts, objectives, and commitments:

WHEREAS, Riverkeeper is a non-profit public benefit corporation whose mission is to preserve, protect, and enhance the water quality, native fisheries, and wildlife of the Russian River and its tributaries;

WHEREAS, Redwood Empire Sawmill is a division of Pacific States Industries, Inc. ("Pacific States"), which operates the sawmill located at 31401 McCray Road in Cloverdale, California (the "Sawmill" or "Facility"). The Facility's mailing address is listed as Post Office Box 156, Cloverdale, CA 95425;

WHEREAS, North Cloverdale Blvd., LLC, holds title to APN 115-150-045 on which a portion of the Sawmill is located.

WHEREAS, the California Regional Water Quality Control Board North Coast Region ("Water Board") issued waste discharge requirements on May 24, 1989 for the Sawmill located at 31401 McCray Road in Cloverdale in Order No. 89-76.

WHEREAS, on March 8, 2007, the Water Board issued a letter to the Sawmill containing "the inspection results, noncompliance notice and request for correction action" related to stormwater at the Facility.

WHEREAS, on August 16, 2007, Plaintiff provided written notice to Defendants and the required regulatory agencies of Plaintiff's intention to file suit ("Notice Letter") for violations of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"), and the State of California's General Permit to Discharge Storm Water Associated with Industrial Activity;<sup>1</sup>

WHEREAS, on September 11, 2007 the Water Board inspected the Sawmill.

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<sup>1</sup> National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter the "Industrial Permit" or "Permit").

1 WHEREAS on October 9, 2007, the Sawmill responded to the Water Board inspection related  
2 issues and the letter of March 8, 2007.

3 WHEREAS, on October 22, 2007, Riverkeeper filed a complaint in the United States District  
4 Court, Northern District of California (Civil Case No. C-07-5393 MHP) alleging Defendants'  
5 violations of the Clean Water Act and the Industrial Permit;

6 WHEREAS, on October 31, 2007, Riverkeeper filed a first amended complaint ("FAC") in the  
7 United States District Court, Northern District of California, alleging Defendants' violations of the  
8 Clean Water Act and the Industrial Permit. The Notice Letter and FAC will hereinafter collectively be  
9 referred to as the "Litigation;"

10 WHEREAS, on December 11, 2007 this case was assigned to the Honorable Judge Patel;

11 WHEREAS, Riverkeeper and Defendants (collectively the "Settling Parties") without  
12 admitting any liability or wrongdoing, agree that it is in their mutual interest to enter into a Consent  
13 Decree setting forth the terms and conditions to resolve the allegations in Riverkeeper's complaint;

14 NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES  
15 AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:

16 1. The Court has jurisdiction over the subject matter of this action pursuant to Section  
17 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);

18 2. Venue is appropriate in the Northern District Court pursuant to Section 505(c)(1) of the  
19 CWA, 33 U.S.C. §1365(c)(1), because the Sawmill at which the alleged violations took place is  
20 located within this District;

21 3. The Complaint states a claim upon which relief may be granted against Defendants  
22 pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

23 4. Riverkeeper has standing to bring this action.

24 **I. OBJECTIVES**

25 5. It is the express purpose of the Settling Parties entering into this Consent Decree to further  
26 the objectives set forth in the Clean Water Act and Industrial Permit and to resolve those issues alleged  
27 by Riverkeeper in this Litigation. In light of these objectives and as set forth fully below, Defendants  
28 agree to comply with the provisions of this Consent Decree. The Settling Parties enter this Consent

Decree for the purpose of avoiding prolonged and costly litigation. Nothing in this Consent Decree shall be construed as, and Pacific States Industries, Inc. and North Cloverdale Blvd., LLC. expressly do not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Decree constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Consent Decree.

## II. SETTLEMENT TERMS

### A. Compliance Measures

6. Discharge Points. Within 60-days of the Effective Date of this Consent Decree, Defendants shall berm the areas directly adjacent to Oat Valley Creek and along McCray Road with the exception of the part of the driveway behind Structure J on the Facility map as Best Management Practices ("BMPs") with the intent to reduce the number of actual or potential storm water Discharge Points ("DPs") at the Sawmill to DP #1 and DP #2. The DPs are identified on the Facility Map attached hereto as Exhibit A. A partial infiltration pit will be placed at the driveway behind Structure J as a BMP. In the event that storm water flowing from this infiltration pit discharges from the Facility, this DP, as with all Facility DPs, will be identified in the Storm Water Pollution Prevention Plan ("SWPPP") and Monitoring and Reporting Program ("M&RP"), sampled and monitored. Additionally, the sampling location for DP #2 will be changed to reflect facility outflow and not runoff from McCray Road. Regardless of whether Defendants, after further investigation, as required by the Water Board, continue to believe in good faith that "RO-NW Outlet" identified on Exhibit A hereto does not discharge storm water associated with industrial activity from the Facility, within the meaning of the Industrial Permit and the CWA, Defendants shall still install a trench no more than one foot in depth and width along the perimeter of Storage Yard A to protect any against any future potential discharges from the Facility.

7. Compliance with Best Available Technology and Best Conventional Pollutant Control Technology. Within 60 days of the Effective Date, Defendants agree to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BMPs that constitute the Best Available Technology for toxic and non-

1 conventional pollutants and the Best Conventional Pollutant Control Technology for conventional  
2 pollutants as defined in the Industrial Permit. Best Available Technology and Best Conventional  
3 Pollutant Control Technology are defined in the Industrial Permit and are commonly referred to as  
4 BAT/BCT. Within 60 days of the Effective Date, Defendants shall, if they have not already done so,  
5 further develop and implement a SWPPP that complies with all requirements of the Industrial Permit  
6 and that includes all BMPs that achieve BAT/BCT. Within 60 days of the Effective Date, Defendants  
7 shall also revise their SWPPP as described herein to include any new BMPs such as the berms  
8 described herein. Defendants shall evaluate the effectiveness of their BMPs by comparing analytical  
9 results of storm water samples with the "Benchmark Levels" identified in Table 1 attached hereto as  
10 Exhibit B and incorporated herein by reference. Defendants agree to comply with the action plan  
11 requirements of paragraph 16 if (1) the average of five (5) storm water samples collected exceed any of  
12 the Benchmark Levels or, (2) less than five (5) storm water samples are collected and any of the storm  
13 water results exceed the Benchmark Levels.

14 8. BMPs Designed to Make Progress Towards Meeting Applicable Water Quality Standards.  
15 Receiving Water Limitation C(2) in the Industrial Permit requires that the Sawmill "not cause or  
16 contribute to the exceedance of an applicable water quality limit." Defendants are required and agree  
17 to make significant progress towards meeting applicable water quality standards ("WQS") as required  
18 by the Water Board, Industrial Permit and the Water Quality Control Plan ("Basin Plan").

19 9. Non-Storm Water Discharges. Within 60 days of the Effective Date, Defendants shall  
20 develop and implement BMPs at the Sawmill to eliminate all non-storm water discharges. The BMPs  
21 shall be incorporated into the Sawmill's SWPPP as set forth below in paragraph 12.

22 10. BMP Maintenance. Defendants shall inspect all BMPs at the Sawmill prior to each  
23 reasonably anticipated rain event occurring during business hours, daily during periods of continuing  
24 rainfall, within 24 hours after rainfall ceases, and monthly during the dry season (defined as June 1 –  
25 September 30), to ensure proper implementation and effectiveness of BMPs. Any BMP that is  
26 temporarily altered shall be restored immediately upon cessation of the operation or by the close of  
27 business, except that where rain has been predicted within 24 hours, the restoration shall occur prior to  
28



1 the rain event forecast for that day. Defendants shall generate a report for each inspection detailing the  
2 conditions observed during the inspection ("Inspection Report") to be maintained at the facility.

3 **B. Employee Training**

4 11. Within 60-days of the Effective Date, Defendants shall provide employee training for  
5 employees at the Sawmill as follows:

6 a. Non-Storm Water Discharge Training. Defendants shall conduct training on the  
7 Industrial Permit's prohibition of non-storm water discharges so that employees know what non-storm  
8 water discharges are and how to avoid them. Such training shall be specified in the SWPPP.

9 b. BMP Training. Defendants shall provide training to all employees responsible  
10 for BMP implementation and maintenance. Training shall be provided by a private consultant or  
11 representative of Defendants familiar with the Industrial Permit requirements and shall be repeated as  
12 necessary to ensure that all such employees are familiar with the Industrial Permit and SWPPP  
13 requirements. Defendants shall maintain training records to document compliance with this paragraph,  
14 and shall provide Riverkeeper with a copy of these records within 14 days of receipt of a written  
15 request.

16 c. Sampling Training. Defendants shall provide training to all individuals  
17 performing sampling pursuant to the Industrial Permit at the Sawmill. All employees shall thereafter  
18 be trained prior to becoming responsible for conducting sampling activities. The training shall be  
19 provided by a private consultant or representative of Defendants familiar with the Industrial Permit  
20 requirements and shall be repeated as necessary to ensure Industrial Permit compliance. Defendants  
21 shall maintain training records to document compliance with this paragraph, and shall provide  
22 Riverkeeper with a copy of these records within 14 days of receipt of a written request.

23 d. Visual Observation Training. Defendants shall provide additional training to all  
24 individuals performing visual observations pursuant to the Industrial Permit at the Sawmill. The  
25 training will be provided by a private consultant or representative of Defendants and shall be repeated  
26 as necessary to ensure Industrial Permit compliance. All new staff will receive this training before  
27 assuming responsibilities for implementing a SWPPP. Defendants shall maintain training records to  
28 document compliance with this paragraph, and shall provide Riverkeeper with a copy of these records  
within 14 days of a written request.

1           **C.     Storm Water Pollution Prevention Plan**

2           12. SWPPP Revisions. Within 60-days of the Effective Date, Defendants agree to revise the  
3 SWPPP currently in effect at the Sawmill to incorporate all storm water pollution prevention measures  
4 and other requirements set forth in this Consent Decree and/or the Industrial Permit. Specifically, the  
5 SWPPP shall include a description of all industrial activities and corresponding potential pollution  
6 sources and, for each potential pollutant source, a description of the potential pollutants from the  
7 sources. The SWPPP shall also identify BMPs, and their implementation dates as required by the  
8 Industrial Permit and the CWA. Defendants shall revise the SWPPP to incorporate additional BMPs  
9 developed pursuant to this Consent Decree, the Industrial Permit, or as required by the Water Board.

10          13. Riverkeeper's review of revised SWPPP. Defendants shall submit one copy of the revised  
11 SWPPP to Riverkeeper within 10 days of completion of the revision.

12           a.       Within 30 days of Riverkeeper's receipt of the revised SWPPP, Riverkeeper  
13 shall provide Defendants with comments and suggestions, if any, concerning the revisions to the  
14 SWPPP.

15           b.       Within 30 days of Defendants' receipt of Riverkeeper's comments on the revised  
16 SWPPP, Defendants will either incorporate Riverkeeper's comments and reissue the SWPPP or they  
17 shall provide a written explanation identifying the comment not incorporated and the reasons therefore.

18           c.       Either party may elect to invoke the dispute resolution procedures as outlined in  
19 paragraphs 23-27 below if a good faith attempt to resolve any dispute is unsuccessful.

20           **D.     Sampling, Monitoring, Inspecting, & Reporting**

21          14. Sampling Program. Within 60-days of the Effective Date, Defendants shall develop and  
22 implement a M&RP for the collection of storm water samples during storm events that incorporates the  
23 requirements of this Consent Decree and the Industrial Permit for the Sawmill.

24          15. Sample Analysis and Sample Frequency. Beginning with the 2008/2009 wet season (wet  
25 season is defined as October 1 – May 31) and continuing each wet season for the life of this Consent  
26 Decree, Defendants shall collect storm water samples from each discharge location at the Sawmill of  
27 each storm event up to five (5) storm events per wet season occurring during business hours.  
28 Defendants shall analyze the samples for the constituents currently identified in Table 1 and the  
SWPPP. Defendants may discontinue analyzing storm water samples for a constituent specified in the

SWPPP and identified in Table 1 after five consecutive sampling results for the constituent are reported as below both the "Benchmark Levels" and any applicable "WQS." A California state certified laboratory shall perform all sample chemical analyses. Defendants shall select laboratories and analytical limits such that, at a minimum, the method detection limits ("MDLs") shall be below both the "Benchmark Levels" and any applicable "WQS". The Benchmark Levels are set forth in Table 1.

16. Action Plans. In the event that Defendants exceed a Table 1 "Benchmark Levels" or applicable "WQS" during the life of this Consent Decree at the Sawmill, Defendants shall meet and confer with Plaintiff as set forth below to devise a mutually agreed upon action plan designed to prevent future exceedances ("Action Plan"). If applicable, the Action Plan is to be done by July 1 following each rainy season following the Effective Date. The Settling Parties agree to comply with the dispute resolution procedures set forth in paragraphs 23-27 below if there are any disagreements regarding the Action Plan(s).

a. Benchmark Levels Action Plan. Defendants shall provide Riverkeeper with an Action Plan by July 1 following each rainy season. The Action Plan shall include when applicable (1) the identification of the pollutant(s) discharged in excess of the Benchmark Levels, (2) an assessment of the source of the pollutant, (3), the identification of additional BMPs that will be implemented to achieve compliance with the Benchmark Levels set forth in Table 1, and (4) time schedules for implementation of the proposed BMPs. Defendants agree to implement all non-structural and structural BMPs contemplated in the Action Plan as soon as practicable but no later than before the rainy season beginning on October 1. Riverkeeper shall have 30 days upon receipt of Defendants' Action Plan to provide Defendants with any such comments. Defendants shall have 14 days from the date Riverkeeper comments on Defendants' Action Plan to commence implementing any additional non-structural or structural BMPs. If any structural BMPs require any agency approval then Defendants shall contact Riverkeeper to request an extension of the deadline to implement the structural BMPs requiring agency approval.. Riverkeeper's consent to Defendants' requested extension shall not be unreasonable withheld. In addition, the BMP(s) shall be subject to any applicable agency requirements and approval. Defendants shall notify Riverkeeper in writing when the Action Plan has been implemented.

1           b.     WQS Action Plan. Defendants shall provide Riverkeeper with an Action Plan  
2 by July 1 following each rainy season to implement additional BMPs designed to make significant  
3 progress towards achieving the "WQS" as required pursuant to the Water Board, the Industrial Permit,  
4 and/or Basin Plan. If applicable, the Action Plan shall include (1) the identification of the pollutant(s)  
5 discharged in excess of the WQS, (2) an assessment of the source of the pollutant (3) the identification  
6 of additional BMPs that will be implemented to make significant progress towards achieving the  
7 applicable WQS; and (4) time schedules for implementation of the proposed structural and non-  
8 structural BMPs. Defendants agree to implement all non-structural and structural BMPs contemplated  
9 in the Action Plan as soon as practicable but no later than before the rainy season beginning on October  
10 1. Riverkeeper shall have 30 days upon receipt of Defendants' Action Plan to provide Defendants  
11 with any such comments. Defendants shall have 14 days from the date Riverkeeper comments on  
12 Defendants' Action Plan to commence implementing any additional non-structural or structural BMPs.  
13 If any structural BMPs require any agency approval then Defendants shall contact Riverkeeper to  
14 request an extension of the deadline to implement the structural BMPs requiring agency approval.  
15 Riverkeeper's consent to Defendants' requested extension shall not be unreasonable withheld. In  
16 addition, the BMP(s) shall be subject to any applicable agency requirements and approval. Defendants  
17 shall notify Riverkeeper in writing when the Action Plan has been implemented.

18       17.       Site Visit. Riverkeeper's water quality engineer, which is currently Dr. Horner, may  
19 conduct one wet weather site visit at the Sawmill ("Site Visit") annually. The Site Visit shall occur  
20 during normal business hours and Riverkeeper shall provide Defendants with at least 48-hours notice  
21 prior to the Site Visit. Riverkeeper agrees that it shall not take any photographs, videotape or other  
22 recording devices at such an inspection. In addition, Riverkeeper agrees that no samples will be taken  
23 from the Sawmill property at such visit. During the Site Inspection, Dr. Horner shall be allowed access  
24 to the Sawmill's SWPPP and monitoring records and to all monitoring reports and data for the  
25 Sawmill.

26       18.       Reporting. During the life of this Consent Decree, Defendants shall concurrently copy  
27 Riverkeeper on all correspondences, plans, Annual Reports, monitoring data, or any document sent to  
28 the Regional Board or any regulatory or government agency or relating to any environmental  
conditions at the Sawmill. Defendants agree to provide Riverkeeper with copies of correspondences or

any documents received from a regulatory or government agency or regarding environmental conditions at the Sawmill within 10 days of the Defendants receipt of such information. Additionally, Defendants shall provide Riverkeeper with a copy of all laboratory analyses of sampling at the Sawmill within 10 days of Defendants' receipt of such information.

**E. Environmental Projects, Litigation Fees, and Compliance Monitoring**

19. Mitigation. As mitigation for the violations alleged in the Complaint, Defendants shall pay \$35,000 directly to the Rose Foundation for Communities and the Environment for use in making grants to eliminate or mitigate the impacts of storm water pollution to California watersheds receiving discharges from the Sawmill. The Rose Foundation's Tax I.D. Number shall be provided to Defendants. Defendants shall remit this payment to Tim Little at The Rose Foundation 6008 College Avenue, Suite 10, Oakland, California 94618 within 30 days of the Effective Date of this Consent Decree. Defendants shall provide Riverkeeper with a copy of such payment.

20. Fees and Costs. Defendants shall reimburse Plaintiff in the amount of \$103,000 to defray Plaintiff's reasonable investigative, expert, consultant and attorneys' fees and costs. Such payment shall be made to the "Lawyers for Clean Water Attorney Client Trust Account" in three installments and delivered by certified mail or overnight delivery to 1004 O'Reilly Avenue, San Francisco, CA 94129. The first such installment shall be in the amount of \$15,000 and due within 30 days of the Effective Date. The second such installment shall be in the amount of \$50,000 and due within 60 days of the Effective Date. The third such installment shall be in the amount of \$38,000 and due within 90 days of the Effective Date.

21. Compliance Monitoring and Oversight. Defendants agree to help defray Riverkeeper's reasonable costs incurred in conducting Site Visits and compliance monitoring by remitting to Riverkeeper \$12,000 within 90 days of the Effective Date of this Consent Decree. Such remitted funds shall be made payable to "Lawyers for Clean Water Attorney Client Trust Account" and delivered by certified mail or overnight delivery to Lawyers for Clean Water, 1004 O'Reilly Avenue, San Francisco, California 94129, attention Layne Friedrich.

**H. Force Majeure**

22. Defendants shall reasonably notify Riverkeeper pursuant to the terms of this paragraph,

1 where implementation of the steps set forth in this Consent Decree, within the time schedules set forth  
2 in those paragraphs, becomes impossible due circumstances beyond the control of Defendants or its  
3 agents, and which could not have been reasonably foreseen and prevented by the exercise of due  
4 diligence by Defendants (a "Force Majeure"). A Force Majeure is an event such as any act of God,  
5 war, fire, earthquake, flood, and restraint by court order or public authority. Any delays due to  
6 unanticipated or increased costs or expenses associated with the completion of any work or activity  
7 under this Consent Decree, changed financial circumstances, or Defendants' failure to make timely and  
8 bona fide applications and to exercise diligent efforts to obtain permits, or normal weather events shall  
9 not, in any event, be considered to be circumstances beyond Defendants' control.

10 a. If Defendants claim impossibility, they shall notify Riverkeeper in writing within  
11 10 days of the date that Defendants first knew of the event or circumstance or should have known of  
12 the event or circumstance by the exercise of due diligence and shall describe the reason for the non-  
13 performance. Defendants' notice shall specifically refer to this Section of this Consent Decree and  
14 describe the anticipated length of time the delay may persist, the cause or causes of the delay, the  
15 measures taken or to be taken by Defendants to prevent or minimize the delay, the schedule by which  
16 the measures will be implemented, and the anticipated date of compliance. Defendants shall adopt all  
17 reasonable measures to avoid and minimize such delays.

18 b. The Settling Parties shall meet and confer in good-faith as soon as it is  
19 practicable, but within 14 working days of the notice provided in paragraph 22(a) above, concerning  
20 the non-performance and, where the Settling Parties concur that the non-performance was or is  
21 impossible, despite the timely good faith efforts of Defendants, due to circumstances beyond the  
22 control of Defendants that could not have been reasonably foreseen and prevented by the exercise of  
23 due diligence by Defendants, new performance deadlines shall be established.

24 c. If Riverkeeper disagrees with Defendants' notice, or in the event that the  
25 Settling Parties cannot timely agree on the terms of such a stipulation, either party shall have the right  
26 to invoke the Dispute Resolution procedures described in Section I below. In such proceeding,  
27 Defendants shall bear the burden of proving that any delay of any requirement of this Consent Decree  
28 was caused or will be caused by Force Majeure and the extent of any delay attributable to such  
circumstances.



1           **I. Dispute Resolution**

2           23.   **Meet and Confer.** If a dispute under this Consent Decree arises, or either party believes  
3 that a breach of this Consent Decree has occurred, the Settling Parties shall meet and confer within ten  
4 (10) days of receiving written notification of a request for such meeting. The Settling Parties may,  
5 upon mutual written agreement, extend the time to conduct the meet and confer discussions beyond 10  
6 days. During the meet and confer proceeding, the Settling Parties shall discuss the dispute and make  
7 best efforts to devise a mutually satisfactory plan, including implementation dates, to resolve the  
8 dispute.

9           24.   If either Settling Party fails to meet and confer or the meet and confer does not resolve  
10 the dispute, after at least 10 days have passed after the meet and confer occurred or should have  
11 occurred, either party shall be entitled to initiate the formal dispute resolution procedures as outlined in  
12 the paragraphs below. The Party initiating the formal dispute resolution procedure shall bear the  
13 burden of proof in establishing that the Consent Agreement has been violated.

14           25.   **Formal Dispute Resolution.** If the meet and confer does not fully resolve the Settling  
15 Parties' disputes, the Settling Parties agree that their exclusive recourse is to file a Motion to Show  
16 Cause ("Motion") in United States District Court for the Northern District of California, before Judge  
17 Patel, to determine whether either party is in breach of this Consent Decree and, if so, to require the  
18 breaching party to remedy any breach identified by the District Court within a reasonable time frame.  
19 The party filing any such Motion may request expedited review of the Motion, and the non-filing party  
20 shall join in any such request.

21           26.   If Judge Patel is not available to perform the role identified herein, the Parties agree that  
22 the Motion shall be re-assigned pursuant to applicable rules of the Northern District Court.

23           27.   The prevailing or substantially prevailing party in the Formal Dispute Resolution  
24 proceeding shall receive its reasonable costs and attorney's fees incurred in the dispute resolution  
25 process in accord with the standard established by § 505 of the Clean Water Act, 33 U.S.C. § 1365(d).

26           **I. Mutual Release Of Liability**

27           28.   Except for violations of this Consent Decree, which shall be addressed in accordance  
28 with this Consent Decree, in consideration of the above, upon the Effective Date of this Consent  
Decree, the Settling Parties hereby fully release each other and their respective successors, assigns,

officers, agents, employees, partners, shareholders, and all persons, firms and corporations including subsidiaries, parent and affiliate companies having an interest in them, from any and all alleged violations of the Clean Water Act and the Industrial Permit claimed in Riverkeeper's FAC against the Defendants up to and including the Effective Date of this Consent Decree.

29. Nothing in this Consent Decree limits or otherwise affects Riverkeeper's right to address or take any position that it deems necessary or appropriate in any formal or informal proceeding before the Regional Board, Environmental Protection Agency ("EPA"), or any other judicial or administrative body on any other matter relating to the Defendants.

**J. Notices**

30. All notices, requests, demands and other communications which may be given under or concerning this Consent Decree shall be in writing and shall be sent via overnight mail or email. In each case, the notice shall be sent to the following:

If to Riverkeeper, addressed to:

Executive Director  
Russian Riverkeeper  
Post Office Box 13350  
Healdsburg, CA 95448  
Email: rrkeeper@sonic.net

with copies to:

Andrew L. Packard  
Law Offices Of Andrew L. Packard  
319 Pleasant Street  
Petaluma, California 94952  
Email: Andrew@packardlawoffices.com

If to Defendants, addressed to:

Roger Burch  
Pacific States Industries, Inc.  
Post Office Box 156  
Cloverdale, CA 95425

with copies to:

Ruben Castellon  
Stanzler, Funderburk & Castellon LLP  
3189 Danville Boulevard, Suite 250G  
Alamo, CA 94507



Email: rcastellon@sfcfirm.com

or to such other place as any party may designate as to itself by written notice to the other party.

31. Any notice, report, certification, data presentation or other document submitted by Defendants under or pursuant to this Consent Decree, which discusses, describes, demonstrates, or supports any finding or makes any representation with any requirement(s) of this Consent Decree shall comply with the Industrial Permit, State and Federal law.

**K. Miscellaneous Provisions**

32. Continuing Jurisdiction. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of the Consent Decree up to and including the Termination Date.

33. Construction. The language in all parts of this Consent Decree shall be construed according to its plain and ordinary meaning, except as to those terms defined in the Clean Water Act or the Industrial Permit, or as specifically herein.

34. Choice Of Law. The laws of the United States shall govern this Consent Decree.

35. Severability. In the event that any provision, paragraph, section, or sentence of this Consent Decree is held by a Court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

36. Counterparts. This Consent Decree may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

37. Modification of the Consent Decree. This Consent Decree, and any provisions herein, may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the Settling Parties.

38. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

39. Integration Clause. This is an integrated Consent Decree. This Consent Decree is intended to be a full and complete statement of the terms of the agreement between the Settling Parties

and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this Consent Decree.

40. Authority. The undersigned representatives for Riverkeeper and the Defendants each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree.

41. Effective Date. The effective date of the Consent Decree shall be the date on which this Consent Decree is entered by the Court and following the 45-day review and comment period ("Effective Date").

42. Term of Consent Decree. This Consent Decree shall continue in effect for a period of five years from the Effective Date.

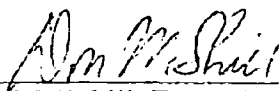
43. Agency Review. Pursuant to the Clean Water Act, Riverkeeper shall submit this executed Consent Decree to the EPA and the United States Department of Justice for the 45-day review and comment period.

44. Court Approval. If for any reason the Court should decline to approve this Consent Decree in the form presented, the Settling Parties shall work cooperatively to modify the Consent Decree within 30-days so that it is acceptable to the Court.

45. Timing. All obligations under this Consent Decree shall begin upon the Effective Date of this Consent Decree unless otherwise stated in this Consent Decree.

The Settling Parties hereby enter into this Consent Decree.

Dated: 6/18/08, 2008

  
Don McEnhill, Executive Director  
Russian Riverkeeper

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Austin Vanderhoof  
Pacific States Industries, Inc.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Roger Burch

1 and expressly supersedes any and all prior oral or written agreements covenants, representations and  
 2 warranties (express or implied) concerning the subject matter of this Consent Decree.

3 40. Authority. The undersigned representatives for Riverkeeper and the Defendants each  
 4 certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and  
 5 conditions of this Consent Decree.

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 7 Consent Decree is entered by the Court and following the 45-day review and comment period  
 8 ("Effective Date").

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 10 five years from the Effective Date.

11 43. Agency Review. Pursuant to the Clean Water Act, Riverkeeper shall submit this  
 12 executed Consent Decree to the EPA and the United States Department of Justice for the 45-day  
 13 review and comment period.

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 15 Decree in the form presented, the Settling Parties shall work cooperatively to modify the Consent  
 16 Decree within 30-days so that it is acceptable to the Court.

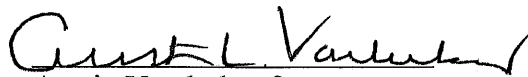
17 45. Timing. All obligations under this Consent Decree shall begin upon the Effective Date  
 18 of this Consent Decree unless otherwise stated in this Consent Decree.

19 The Settling Parties hereby enter into this Consent Decree.

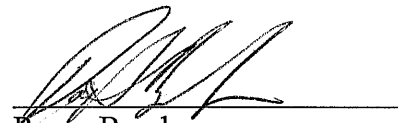
20 Dated: \_\_\_\_\_, 2008

21 \_\_\_\_\_  
 22 Don McEnhill, Executive Director  
 Russian Riverkeeper

23 Dated: JUNE 23, 2008

24   
 25 Austin Vanderhoof  
 Pacific States Industries, Inc.

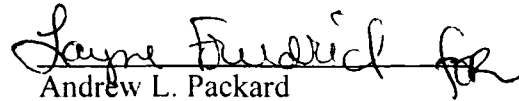
26 Dated: 6/22, 2008

27   
 28 Roger Burch  
 North Cloverdale Blvd., LLC

North Cloverdale Blvd., LLC

approved as to form:

Dated: \_\_\_\_\_, 2008

  
Andrew L. Packard  
Law Offices of Andrew L. Packard  
Attorneys for Plaintiff  
Russian Riverkeeper

Dated: \_\_\_\_\_, 2008


\_\_\_\_\_  
Ruben Castellon  
Stanzler, Funderburk & Castellon LLP  
Attorney for Defendants

1  
2 approved as to form:

3  
4 Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Andrew L. Packard  
Law Offices of Andrew L. Packard  
Attorneys for Plaintiff  
Russian Riverkeeper

5  
6  
7  
8  
9 Dated: \_\_\_\_\_, 2008

  
\_\_\_\_\_  
Ruben Castellon  
Stanzler, Funderburk & Castellon LLP  
Attorney for Defendants

~~PROPOSED~~ ORDER

Based on the above Consent Decree,

IT IS HEREBY ORDERED that the above captioned action is dismissed with prejudice.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over Riverkeeper's claims against Defendant for the sole purpose of enforcing compliance by the Settling Parties with the terms of the Consent Decree;

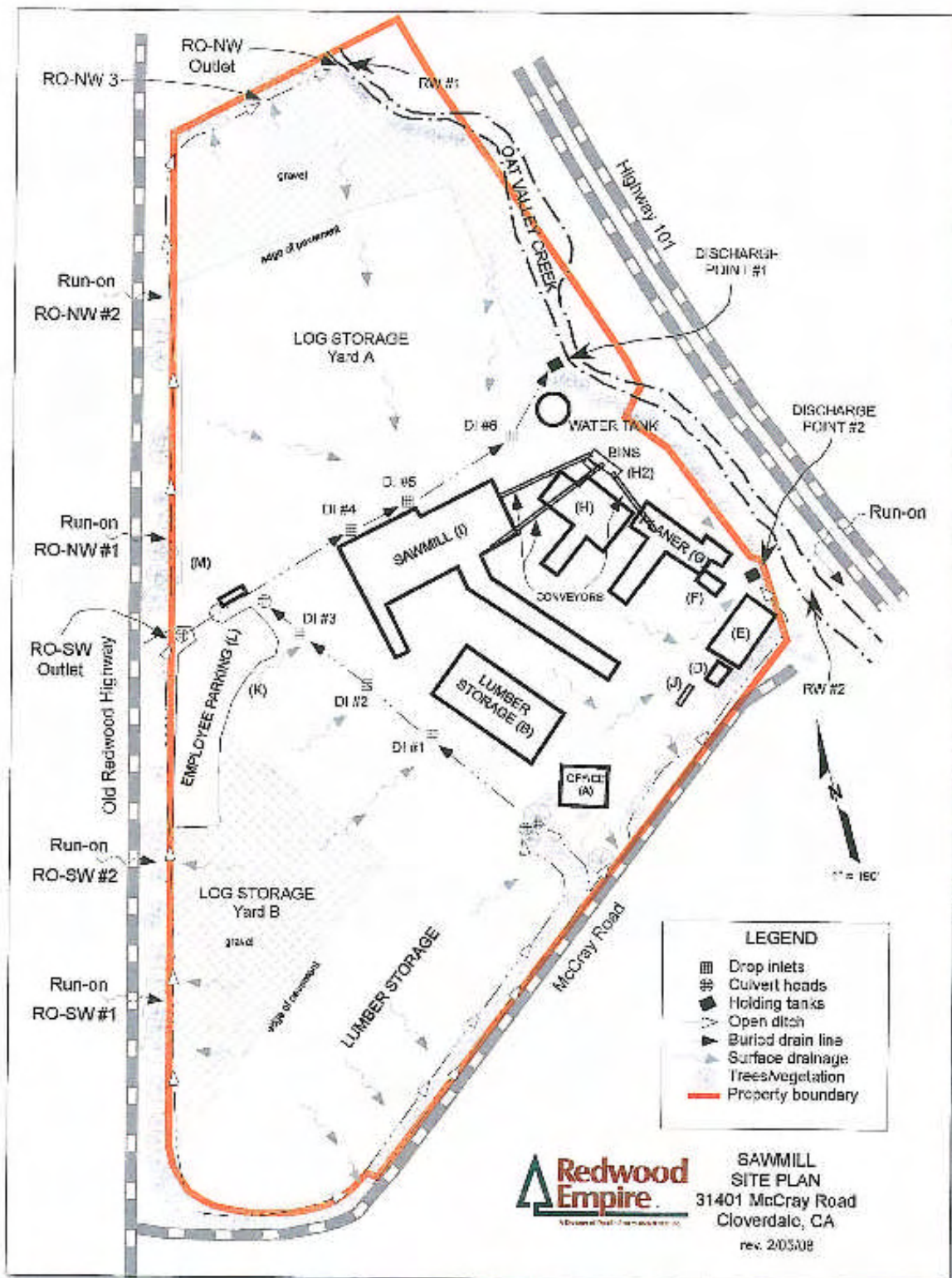
IT IS SO ORDERED.

Dated: 9/3/2008

NORTHERN DISTRICT OF CALIFORNIA



## EXHIBIT A – FACILITY MAP



**EXHIBIT B – TABLE 1****Benchmarks Levels**

Zinc Total *	mg/L	0.117
Ammonia-Nitrogen	mg/L	19
Oil and Grease	mg/L	15
Total Suspended Solids	mg/L	100
Chemical Oxygen Demand	mg/L	120
Total Organic Carbon	mg/L	110
Biochemical Oxygen Demand	mg/L	30
pH	s.u.	6.0 to 9.0
Specific Conductance	uohms/cm	700
Hardness		

\* Hardness dependent - assumes 100